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12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 DANJAQ, LLC, a Delaware limited  
liability company; METRO-GOLDWYN-  
15 MAYER STUDIOS INC., a Delaware  
corporation; UNITED ARTISTS  
16 CORPORATION, a Delaware  
corporation; SEVENTEEN LEASING  
17 CORPORATION, a Delaware  
corporation; EIGHTEEN LEASING  
18 CORPORATION, a Delaware  
corporation; NINETEEN LEASING  
19 CORPORATION, a Delaware  
corporation; TWENTY LEASING  
20 CORPORATION, a Delaware  
corporation; and TWENTY-ONE  
21 LEASING COMPANY LLC, a Delaware  
limited liability company,

22 Plaintiff,

23 v.  
24

25 UNIVERSAL CITY STUDIOS LLC, a  
Delaware limited liability company;  
NBCUNIVERSAL MEDIA, LLC, a  
26 Delaware limited liability company; and  
AARON BERG, an individual,  
27

28 Defendant.

Case No. 2:14-cv-02527 DDP-Ex

**PLAINTIFFS' OPPOSITION TO  
MOTION TO DISMISS  
COMPLAINT BY DEFENDANTS  
UNIVERSAL CITY STUDIOS  
AND NBCUNIVERSAL MEDIA**

**Judge:** Hon. Dean D. Pregerson  
**Magistrate:** Hon. Charles F. Eick

**Date:** July 28, 2014  
**Time:** 10:00 A.M.  
**Place:** Courtroom 3 - 2nd Fl.

**Complaint:** April 3, 2014

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## I. INTRODUCTION

Defendants Universal City Studios and NBCUniversal Media (collectively, “Universal”) move to dismiss based on the legally incorrect premise that they cannot be liable even if the *Section 6* Screenplay infringes plaintiffs’ copyrights. Universal’s reliance on the assertion that it did not write or contribute to the Screenplay is inconsequential: Plaintiffs have alleged past and ongoing conduct by *Universal* sufficient to constitute direct and secondary copyright infringement. Accordingly, this action is not, as Universal claims, “premature.” Rather, the Court should deny Universal’s motion on each of the following independent grounds:

*First*, it makes no difference that Universal did not write the Screenplay. The complaint alleges “post-purchase” conduct by *Universal* that directly infringed plaintiffs’ copyrights. Universal: (a) reproduced (*i.e.*, made copies of) the Screenplay without plaintiffs’ permission, in violation of 17 U.S.C. § 106(1), Compl. ¶¶ 44, 69; (b) distributed copies of the Screenplay to engage producers, directors, and actors—critical steps in making a motion picture based on that Screenplay—in violation of section 106(3), Compl. ¶¶ 9, 44, 51, 69; and (c) authorized the preparation of an *additional* infringing Screenplay (*i.e.*, an unauthorized derivative work) in violation of section 106(2), Compl. ¶¶ 45-50, 69. Universal’s motion does not address any of that conduct; yet each constitutes a sufficient, separate basis to state a claim against Universal for direct infringement of the Bond works, and each is sufficient grounds to deny Universal’s motion.<sup>1</sup>

Universal’s post-filing admissions, of which this Court can take notice, defeat Universal’s motion as to plaintiffs’ secondary infringement claims (the Second through Fourth Claims). On April 11, 2014, in opposing plaintiffs’ request for expedited discovery, Universal admitted that it has commissioned the preparation of a revised Screenplay and is supervising that work right now. *See*

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<sup>1</sup> The “Bond works” are the *James Bond* motion pictures and literary works identified in Appendix A to plaintiffs’ complaint. Dkt. No. 1.

1 Dkt. Nos. 15 at 2:7-10, 2:27-3:1; 15-1 ¶¶ 3, 7. Those facts not only satisfy the  
 2 pleading standard for plaintiffs' secondary infringement claims, they would be  
 3 sufficient to defeat a motion for summary judgment.

4 **Second**, Universal's motion is based on the erroneous premise that its  
 5 liability is measured only by the "final" screenplay or the film that it eventually  
 6 produces, and that "earlier" drafts (*e.g.*, the Screenplay it bought from Berg and the  
 7 revision it commissioned) are irrelevant to the question of whether it has infringed  
 8 the Bond works. *See* Mot. at 6-7. That theory applies to cases where the plaintiff  
 9 seeks to use "interim" drafts to prove that the "final" version is infringing. But  
 10 plaintiffs have not sought to do that here and have no need to do so. Universal *has*  
 11 *already* unlawfully copied and distributed a screenplay that infringes plaintiffs'  
 12 rights. Universal is liable *now* for its past conduct with regard to *that* screenplay.  
 13 That is enough to state a claim for direct infringement and deny Universal's motion.

14 With respect to the claims for secondary infringement, Universal argues that  
 15 plaintiffs cannot sue until it has finished making its revisions to the Screenplay.  
 16 That is not the law. Courts can and do find "intermediary" works to be a sufficient  
 17 basis on which to find infringement. Further, between now and the end of the  
 18 production of any *Section 6* motion picture, were the project to proceed that far, the  
 19 Screenplay will *always* be subject to change and thus, from a film-making  
 20 standpoint, remain "unfinished." But the law does not require plaintiffs to sit on  
 21 their rights until Universal deems its revisions to be "finished" or until the movie  
 22 "wraps." For purposes of suing over the separate derivative work that a revised  
 23 Screenplay constitutes, the law requires only that some change have been made and  
 24 that it have been reduced to a tangible medium of expression, such as a word  
 25 processing file on Berg's computer. The complaint alleges just that: that Universal  
 26 has hired one or more writers and that they are revising the Screenplay. Compl.  
 27 ¶¶ 45-48, 50. As noted above, that is not conjecture: Universal admitted two  
 28 months ago that it hired Berg to revise the Screenplay and that his work is ongoing.



1 See Dkt. Nos. 15 at 2:7-10, 2:27-3:1; 15-1 ¶¶ 3, 7. Such conduct constitutes the  
2 preparation of a separate derivative work based upon the Bond works.

3 The complaint alleges that this separate derivative work infringes plaintiffs'  
4 copyrights. Compl. ¶¶ 46-50. Plaintiffs have a valid basis to allege that: (a) the  
5 revised Screenplay is based on a screenplay that is infringing; (b) before filing this  
6 lawsuit, plaintiffs gave Universal the opportunity to exonerate itself by telling  
7 plaintiffs what revisions Universal was going to make to remove the infringing  
8 content, but Universal refused to do so—a fact from which the jury could infer that  
9 the revised Screenplay continues to infringe plaintiffs' copyrights; (c) Universal has  
10 refused to provide plaintiffs with any of the revised pages; and (d) Universal has  
11 paid Berg over \$1 million for the Screenplay and it would be contrary to industry  
12 practice, and make no sense, to pay anything close to that amount of money for a  
13 screenplay whose characters, plot, key dialogue, themes, settings, etc., the buyer  
14 intended to immediately discard. See Compl. ¶¶ 2-5, 7-11, 40, 42-43, 53, 56-71.  
15 Thus, and as detailed in Section V below, these allegations are sufficient to state a  
16 claim for secondary infringement. Universal may want to dispute them, but it may  
17 not do so on a pleading motion.

18 **Third**, neither plaintiffs nor the Court are required, in testing the sufficiency  
19 of the complaint, to accept Universal's pledge that it will eventually revise the  
20 Screenplay so as to remove all infringing content. Indeed, the Court is required to  
21 do the opposite: accept factual allegations in the complaint as true and draw all  
22 reasonable inferences in *plaintiffs'* favor. Regardless, copyright infringement is a  
23 strict liability claim; thus, Universal's disclaimer of an intent to infringe is legally  
24 meaningless. See *Pye v. Mitchell*, 574 F.2d 476, 481 (9th Cir. 1978) ("even where  
25 the defendant believes in good faith that he is not infringing a copyright, he may be  
26 found liable").<sup>2</sup> And if lawsuits could be dismissed based solely on the defendant's

27 \_\_\_\_\_  
28 <sup>2</sup> All emphases added and all internal citations and quotations omitted, unless  
otherwise noted.

1 “assurance” that it would not violate the plaintiff’s rights, or would cure a past  
2 violation of those rights, no case would get beyond the pleading stage.

3 **Fourth**, Universal’s motion is based on an erroneous reading of the pleading  
4 standards applicable to allegations a plaintiff may assert on “information and  
5 belief.” Plaintiffs are entitled to plead such allegations, especially where, as here,  
6 the basis for those facts is in Universal’s exclusive control. Here, these facts are  
7 based not on mere conjecture, but on public reports and decades-long customs and  
8 practices for the development of motion pictures with which plaintiffs are familiar.  
9 Thus, plaintiffs have exceeded the standards for sufficiently pleading facts on  
10 information and belief. Further, Universal has admitted some of these facts in  
11 opposing expedited discovery—which are properly the subject of judicial notice—  
12 and is thereby estopped from attacking the sufficiency of those allegations.

13 Notwithstanding Universal’s attempt to trivialize the monetary damages its  
14 infringing conduct has thus far inflicted, plaintiffs are entitled to exercise the full  
15 array of remedies provided under the Copyright Act, including the injunctive  
16 provisions of section 502(a) to prevent or restrain further acts of infringement,  
17 including the further reproduction and distribution of the Screenplay and the  
18 preparation of further unauthorized derivative works based on it. For these reasons,  
19 and those discussed below, the Court should deny Universal’s motion.

## 20 **II. UNIVERSAL MISSTATES THE LEGAL STANDARD GOVERNING** 21 **PLEADINGS.**

22 Universal misstates the legal standards under *Twombly/Iqbal*. See Mot. at  
23 10-12. To defeat a motion to dismiss, a plaintiff need only “plead[] factual content  
24 that allows the court to draw the reasonable inference that the defendant is liable for  
25 the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); accord *Bell*  
26 *Atl. Corp. v. Twombly*, 550 U.S. 544, 556-59 (2007). To satisfy that, plaintiffs must  
27 merely “nudge[] their claims across the line from conceivable to plausible.”  
28 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff

1 pleads factual content that allows the court to draw the reasonable inference that the  
 2 defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678; *see also*  
 3 *Twombly*, 550 U.S. at 556 (a claim is plausible, even if finding “actual proof of [the  
 4 alleged] facts is improbable, and that a recovery is very remote and unlikely”).

5 In evaluating the plausibility of the complaint, the Court must accept the  
 6 complaint’s allegations as true and draw all reasonable inferences in plaintiffs’  
 7 favor. *See Ass’n for L.A. Deputy Sheriffs v. Cnty. of L.A.*, 648 F.3d 986, 991, 994  
 8 (9th Cir. 2011). This legal principle applies to complaints that allege copyright  
 9 infringement. *See, e.g., Dillon v. NBCUniversal Media LLC*, 2013 WL 3581938, at  
 10 \*3-5 (C.D. Cal. June 18, 2013) (“[a]fter examining the Treatment and viewing the  
 11 Program, the Court concludes that, *drawing all reasonable inferences in favor of*  
 12 *Plaintiff*, there are enough similar elements for Plaintiff to state a claim of copyright  
 13 infringement at this stage of the litigation”).

14 Contrary to Universal’s argument, *Twombly* “does not prevent a plaintiff  
 15 from pleading facts alleged ‘upon information and belief’ where the facts are  
 16 peculiarly within the possession and control of the defendant.” *Keegan v. Am.*  
 17 *Honda Motor Co.*, 838 F. Supp. 2d 929, 961 n.85 (C.D. Cal. 2012); *see also W.*  
 18 *Sugar Coop. v. Archer-Daniels-Midland Co.*, 2012 WL 3101659, at \*2 (C.D. Cal.  
 19 July 31, 2012) (plaintiff may allege “on information and belief” when it “lacks  
 20 personal knowledge about certain facts, but obtained hearsay or other secondhand  
 21 information that lead him or her to believe them to be true”). That is the case here.  
 22 Only Universal knows the extent of the infringing actions it has taken with regard  
 23 to the Screenplay. Because of this, plaintiffs based certain allegations on published  
 24 reports about Universal’s conduct with respect to the Screenplay, on industry  
 25 customs concerning the development of motion picture projects, and on reasonable  
 26 inferences that flow therefrom. Compl. ¶¶ 7-11, 14, 21, 27-29, 51, 53. Plaintiffs  
 27 brought these facts to Universal’s attention before filing this lawsuit. Compl.  
 28 ¶¶ 10-11. Plaintiffs gave Universal ample opportunity to dispute those facts, but

1 Universal refused to do so. *Id.* Plaintiffs thus have a more than sufficient basis to  
 2 allege Universal's conduct on information and belief.

3 Universal errs in relying on *Richtek Tech. Corp. v. UPI Semiconductor*  
 4 *Corp.*, 2011 WL 166198, at \*3 (N.D. Cal. Jan. 18, 2011), to argue that "information  
 5 and belief" pleadings are improper. The plaintiff in *Richtek* pled only that it owned  
 6 the copyright in a work and that defendants had copied it, without identifying the  
 7 infringing work or describing how it was similar to the infringed work. *Id.* at \*3.  
 8 The *Richtek* plaintiff's failure to plead elements of a claim for infringement doomed  
 9 that complaint—not the use of "information and belief" allegations:

10 The closest the complaint comes [to alleging copyright infringement]  
 11 are paragraphs 77 and 78:

12 77. Upon information and belief, Defendants ... have  
 13 had access to Richtek's Copyright Works.

14 78. Upon information and belief, Defendants ... have  
 15 made unauthorized copies, prepared derivative  
 16 works and distributed copies of Richtek's  
 17 copyright works ... without Richtek's permission.

18 ... Richtek's argument that these paragraphs put Maxchip on notice of  
 19 its copyright infringement contentions is laughable.

20 *Id.* Universal's attempt to liken plaintiffs' detailed 40-page complaint to those two  
 21 paragraphs in *Richtek* is, to use that court's word, "laughable."<sup>3</sup>

22  
 23  
 24 <sup>3</sup> Universal's other "information and belief" cases are inapposite. *See* Mot. at 10-12  
 25 (citing *Vivendi SA v. T-Mobile USA, Inc.*, 586 F.3d 689, 694 (9th Cir. 2009)  
 26 (dismissing complaint on *forum non conveniens* ground where complaint alleged no  
 27 facts connecting the claims to United States); *Simonyan v. Ally Fin. Inc.*, 2013 WL  
 28 45453, at \*2 (C.D. Cal. Jan. 3, 2013) (dismissing complaint that failed to meet  
 heightened pleading standard of particularity in fraud claim); *Solis v. City of*  
*Fresno*, 2012 WL 868681, at \*8 (E.D. Cal. Mar. 13, 2012) (dismissing "class of  
 one" equal protection claim where plaintiff identified no similarly-situated person)).

### 1 III. SUMMARY OF PLAINTIFFS' ALLEGATIONS.

2 In late 2013, plaintiffs learned from published reports that Universal had  
3 acquired rights to the Screenplay and that it had paid in excess of \$1 million for it.  
4 Compl. ¶¶ 7, 39, 42, 43, 53. In November, plaintiffs wrote to Universal describing  
5 the infringing nature of the Screenplay, and asked Universal to stop its development  
6 activities. *Id.* ¶ 7. Universal declined, stating that it had made no decision on  
7 whether to pursue the project and that a lawsuit was premature. *Id.* ¶ 8.

8 In March 2014, additional published reports contradicted Universal's prior  
9 representations. *Id.* ¶¶ 9, 51. Instead of being ambivalent about whether to pursue  
10 the project, Universal had contracted with producers, a director, and a lead actor—  
11 the key creative talent for a motion picture—and was planning to launch a franchise  
12 around the Screenplay. *Id.* ¶¶ 9, 44, 51. Plaintiffs know from their own experience,  
13 *id.* ¶ 14, 21, 27-29, and reasonable inferences, that talent does not commit to a  
14 project without seeing the screenplay. Thus, Universal necessarily must have  
15 reproduced the Screenplay and distributed it, at a minimum, to four producers, a  
16 director, and an actor. *Id.* ¶¶ 9, 44, 51, 53. Plaintiffs asked Universal whether it  
17 was using the infringing Screenplay to engage cornerstone talent for the project and  
18 again asked Universal to stop development. *Id.* ¶ 10. Plaintiffs also asked whether  
19 Universal had revised the Screenplay and requested that Universal provide  
20 plaintiffs with any revised version, as well as the version Universal had copied and  
21 distributed to those it was seeking to hire for the project, if different. *Id.* Universal  
22 refused to provide any information and refused to stop development. *Id.* Tellingly,  
23 Universal did not deny that it had copied and distributed the infringing Screenplay.

24 The complaint alleges that the Screenplay infringes plaintiffs' copyrights in  
25 the Bond works. It alleges that plaintiffs own those copyrights and that the  
26 Screenplay copies material from the Bond works without authorization. *Id.* ¶¶ 3-5,  
27 27, 30-35, 38, 40, 52, 56-71. It further alleges that Universal made copies of the  
28 Screenplay and distributed it, and authorized others to prepare a revised Screenplay

1 that copies material from the Bond works. *Id.* ¶¶ 9, 44-51, 69. Such allegations are  
 2 sufficient to state a claim for copyright infringement. *See A&M Records, Inc. v.*  
 3 *Napster, Inc.*, 239 F.3d 1013 (9th Cir. 2001) (plaintiffs need only allege “ownership  
 4 of the allegedly infringed material” and “that the alleged infringers violate[d] at  
 5 least one exclusive right granted to copyright holders under 17 U.S.C. § 106”).  
 6 Universal does not challenge the legal sufficiency of those allegations.

7 Because evidence of direct copying is often hard to adduce, the complaint  
 8 also alleges facts related to the alternative method of proving “copying,” that is, that  
 9 Berg had access to plaintiffs’ works, and that the Bond works and the Screenplay  
 10 are substantially similar. Compl. ¶¶ 3-5, 37-38, 40, 56-64. Universal’s motion  
 11 does not challenge those allegations either. The complaint also alleges facts on  
 12 which a fact-finder could find substantial similarity, namely, the elements of the  
 13 “extrinsic” test (similarity in characters, plot, dialogue, theme, setting, pace, mood,  
 14 etc.) and the “intrinsic” test (ordinary observer’s subjective assessment of similarity  
 15 in expression). *Id.* ¶¶ 3-4, 40, 56-64; *see Shaw v. Lindheim*, 919 F.2d 1353, 1356-  
 16 57 (9th Cir. 1990). Universal’s motion does not dispute those allegations.

17 Even if those elements are deemed unprotectable under the extrinsic test, the  
 18 complaint also alleges that the Screenplay copies the unique selection and  
 19 arrangement of elements from the Bond works and is therefore infringing under the  
 20 Ninth Circuit’s *Metcalf* standard. Compl. ¶¶ 2-5, 64; *see Metcalf v. Bochco*, 294  
 21 F.3d 1069, 1074 (9th Cir. 2002). Universal does not challenge the *Metcalf*  
 22 allegations. (Nor does Berg, which is also fatal to *his* motion. *See* Dkt. No. 22.)

23 Universal’s conduct implicates claims for relief for both direct and indirect  
 24 (secondary) infringement. The complaint alleges not only that Universal has made  
 25 copies of the infringing work and distributed those copies, but also that Universal  
 26 has commissioned the preparation of an unauthorized derivative work based on the  
 27 infringing work, hired Berg to aid in that endeavor, and directed him. Compl.  
 28 ¶¶ 45-50, 72-94. Moreover, plaintiffs have alleged that the current revised version



1 of the Screenplay infringes the Bond works. *Id.* ¶ 50. Those allegations describe  
 2 conduct that makes Universal liable for contributory infringement, vicarious  
 3 infringement, and inducement to infringe. *See infra*, Section V.

4 After plaintiffs filed this lawsuit, Universal admitted that it is working with  
 5 co-defendant Berg to prepare a derivative work based on the infringing Screenplay.  
 6 *See* Dkt. Nos. 15-1 ¶ 3 (“As part of the customary process to develop a possible  
 7 motion picture, Mr. Berg was subsequently engaged to undertake a rewrite of the  
 8 Original Berg Script based on instructions from Universal.”); 15 at 2:27-3:1 (same).  
 9 Universal made this admission on April 11, 2014—more than two months ago.  
 10 Plaintiffs ask the Court, in the concurrently filed request for judicial notice, to take  
 11 judicial notice of these party admissions and to consider the admissions in ruling on  
 12 defendants’ motions to dismiss.<sup>4</sup>

#### 13 **IV. PLAINTIFFS HAVE ALLEGED FACTS SUFFICIENT TO STATE A** 14 **CLAIM AGAINST UNIVERSAL FOR DIRECT INFRINGEMENT.**

##### 15 **A. Universal Has Infringed By Reproducing, Distributing, And** 16 **Preparing Derivative Works Based On The Bond Works.**

17 To state a claim for direct copyright infringement, a plaintiff need allege only  
 18 “ownership of the allegedly infringed material” and “that the alleged infringers  
 19 violate[d] at least one exclusive right granted to copyright holders under 17 U.S.C.  
 20 § 106.” *A&M Records*, 239 F.3d at 1013. Universal does not dispute that plaintiffs  
 21 own copyrights to the Bond works, *see* Compl. ¶¶ 26-27, 29-35, and, for purposes  
 22 of its motion, Universal does not dispute that the Screenplay infringes the Bond  
 23

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24 <sup>4</sup> Courts may take judicial notice of party admissions in court filings. *See Menlo*  
 25 *Logistics, Inc. v. Gainey Transp. Servs., Inc.*, 2005 WL 1021443, at \*1 n.1 (N.D.  
 26 Cal. May 2, 2005) (taking judicial notice of admission in answer); FED. R. EVID.  
 27 201(b)(2) (court may take judicial notice of evidence that “can be accurately and  
 28 readily determined from sources whose accuracy cannot reasonably be  
 questioned”). Courts may rely on judicially noticeable facts in ruling on a motion  
 to dismiss. *Peace and Freedom Party v. Bowen*, 912 F. Supp. 2d 905, 907 (E.D.  
 Cal. 2012) (taking judicial notice of admission in ruling on a 12(b)(6) motion).

1 works, Mot. at 2 n.1.<sup>5</sup> Thus, the only question on plaintiffs’ direct infringement  
 2 claim is whether Universal violated any of the exclusive rights granted to the  
 3 copyright holder with respect to the Screenplay.

4 As Universal admits, plaintiffs—as copyright holders—have the exclusive  
 5 right to reproduce, distribute, and prepare derivative works based on the Bond  
 6 works. *See* 17 U.S.C. § 106; Mot. at 5. This means that only plaintiffs can create,  
 7 copy, or distribute sequels, prequels, remakes, or new versions of the Bond works,  
 8 or use the characters (including James Bond), plots, dialogue, and other protectable  
 9 elements of the Bond works in other works. *See Anderson v. Stallone*, 1989 WL  
 10 206431, at \*8-11 (C.D. Cal. Apr. 25, 1989).

11 The complaint alleges that the Screenplay is based upon the Bond works and  
 12 thus constitutes an unauthorized derivative work. Compl. ¶¶ 2-5, 38, 40, 50, 56-64.  
 13 As such, neither Berg nor Universal may exercise any of a copyright owner’s rights  
 14 under section 106 with regard to the Screenplay.<sup>6</sup> Universal does not challenge  
 15 these allegations or the legal conclusions that flow from them.

16 ***Universal Violated Plaintiffs’ Exclusive Reproduction Right.*** It is a  
 17 violation of plaintiffs’ rights under section 106(1) to reproduce (*i.e.*, make copies  
 18 of) the Screenplay without authorization. *See* 17 U.S.C. § 106(1) (“the owner of  
 19

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20 <sup>5</sup> Universal’s assertions that it will heavily revise the Screenplay, and that future  
 21 versions will not infringe the Bond works, tacitly acknowledge that the Screenplay  
 22 is infringing. *See* Mot. at 8 (“Plaintiffs have been told, over and over again, that  
 23 [the revised] screenplay[] ... will not violate Plaintiffs’ rights”), 10 (“Universal has  
 24 represented [the revised screenplay] will ‘deviate significantly’ from the  
 25 Screenplay”); Compl. ¶ 8 (if Universal “elected to develop a motion picture based  
 26 on the screenplay, it would ‘deviate significantly from its current iteration’”).

27 <sup>6</sup> The person who prepares an unauthorized derivative work may not exercise any of  
 28 the exclusive rights of a copyright owner with regard to any of the infringing  
 portions of that work. *See* 17 U.S.C. § 103(a) (“protection for a work employing  
 preexisting material in which copyright subsists does not extend to any part of the  
 work in which such material has been used unlawfully”); *Pickett v. Prince*, 207  
 F.3d 402, 405-06 (7th Cir. 2000) (denying plaintiff’s infringement claim where  
 plaintiff had created an unauthorized derivative work and then sought copyright  
 protection for another’s infringement of the material he had stolen for his work).



copyright ... has the exclusive right[] to ... reproduce the copyrighted work in copies”); *Mirage Editions, Inc. v. Albuquerque A.R.T. Co.*, 856 F.2d 1341, 1343 (9th Cir. 1988) (preparing a new unauthorized derivative work using artwork taken from a book collecting artwork—*i.e.*, a derivative work—infringed copyrights in the book and in the artwork itself); *DC Comics v. Towle*, 2013 WL 541430, at \*12 (C.D. Cal. Feb. 7, 2013) (“The owner of the underlying work has standing to assert copyright infringement of the derivative work, even when the defendant copies only from the derivative work.”). The complaint alleges that Universal made copies of the Screenplay without plaintiffs’ permission and used those copies to induce producers, a lead actor, and a director to make a motion picture based on that Screenplay. Compl. ¶¶ 9, 44, 51-53, 69. The Court must accept these allegations as true. *See Ass’n for L.A. Deputy Sheriffs*, 648 F.3d at 991. This alone is sufficient to state a claim against Universal for direct copyright infringement. *See Walt Disney Prods. v. Filmmation Assocs.*, 628 F. Supp. 871, 876 (C.D. Cal. 1986) (“infringement occurs whenever an unauthorized copy ... is made, even if it is used solely for the private purposes of the reproducer”).

***Universal Violated Plaintiffs’ Exclusive Distribution Right.*** Likewise, it is a violation of plaintiffs’ rights under section 106(3) to distribute the Screenplay—an unauthorized derivative work based upon the Bond works—without plaintiffs’ permission. *See* 17 U.S.C. § 106(3) (“the owner of copyright ... has the exclusive right[] to ... distribute copies”); *Ortiz-Gonzalez v. Fonovisa*, 277 F.3d 59, 62 (1st Cir. 2002) (unauthorized distribution of copyrighted works constitutes direct infringement); *Novell, Inc. v. Unicom Sales, Inc.*, 2004 WL 1839117, at \*14-15 (N.D. Cal. Aug. 17, 2004). The complaint alleges, based on widely published media reports, that after Universal purchased the Screenplay—an unauthorized derivative work—Universal distributed it to prospective actors, directors, and producers without plaintiffs’ permission. Compl. ¶¶ 2, 5, 7, 9, 42-44, 51-53, 69, 75. Again, the Court must accept these allegations as true. *See Ass’n for L.A. Deputy*

1 *Sheriffs*, 648 F.3d at 991. Universal's conduct infringed plaintiffs' exclusive right  
 2 of distribution, and is sufficient to state a claim against Universal for direct  
 3 infringement. *See Ford Motor Co. v. Summit Motor Prods., Inc.*, 930 F.2d 277, 300  
 4 (3d Cir. 1991) ("a violation of section 106(3) can ... occur when illicit copies of a  
 5 copyrighted work are only distributed to one person," even as a gift).

6 ***Universal Violated Plaintiffs' Exclusive Right To Prepare Derivative***  
 7 ***Works, And The Exclusive Right To Authorize Others To Do So.*** Under section  
 8 106(2), only plaintiffs possess the right to prepare derivative works based on the  
 9 Bond works, or to authorize others to prepare such works. *See* 17 U.S.C. § 106(2);  
 10 *Anderson*, 1989 WL 206431, at \*11 (holding that an unauthorized treatment for a  
 11 sequel to the *Rocky* motion pictures infringed Sylvester Stallone's "exclusive right  
 12 to prepare derivative works ... based upon these movies"). The complaint alleges  
 13 facts sufficient to state a claim against Universal for violation of section 106(2),  
 14 namely the existence of a revised Screenplay, Universal's authorization of its  
 15 creation, and that the revised Screenplay infringes plaintiffs' copyrights.

16 The complaint alleges the existence of a revised Screenplay, and that  
 17 Universal is responsible for its creation. Compl. ¶¶ 46-50. More than two months  
 18 ago, Universal admitted that it hired Berg to revise the Screenplay and continues to  
 19 supervise his work. Dkt. Nos. 15 at 2:27-3:1; 15-1 ¶ 3. The revision process need  
 20 not be complete before plaintiffs can sue. Even if the revised Screenplay exists  
 21 only as a working version in an electronic file on Berg's computer, plaintiffs can  
 22 pursue copyright claims based on that work. *See* 17 U.S.C. § 101 ("‘Copies’ are  
 23 material objects ... in which a work is fixed by any method ... and from which the  
 24 work can be perceived, reproduced, or otherwise communicated, either directly or  
 25 with the aid of a machine or device .... [When the work is] prepared over a period  
 26 of time, the portion of it that has been fixed at any particular time constitutes the  
 27 work as of that time, and where the work has been prepared in different versions,  
 28 each version constitutes a separate work."); *Walt Disney Prods.*, 628 F. Supp. at

1 876 (“It is thus irrelevant that [defendant] has not concluded or ‘realized’ what it  
 2 considers to be a final [work]: the Act prohibits the creation of copies, even if the  
 3 creator considers those copies mere interim steps toward some final goal.”).  
 4 Plaintiffs’ allegations and Universal’s admissions are thus a sufficient basis for a  
 5 fact-finder to reasonably infer that a separate unauthorized derivative work based  
 6 on the Bond works exists, even if in a form Universal considers to be “unfinished,”  
 7 and that Universal authorized and is responsible for its preparation.

8 The complaint alleges that the revised Screenplay infringes the Bond works.  
 9 Compl. ¶ 50. This allegation is based on: (a) the fact that the original Screenplay is  
 10 infringing, *id.* ¶¶ 2-5, 7-11, 38, 40, 56-71; (b) the facts that Universal refused to  
 11 identify any changes to the Screenplay it requested or planned to make and refused  
 12 to provide plaintiffs with the revised Screenplay itself, *id.* ¶¶ 10-11; and (c) the fact  
 13 that Universal paid Berg over \$1 million for the Screenplay, *id.* ¶¶ 7, 42, 53, and  
 14 industry practice and common sense, which dictate that Universal would not have  
 15 paid that amount for a screenplay whose characters, plot, key dialogue, themes,  
 16 settings, etc., it intended to immediately jettison, *id.* ¶¶ 7, 11, 42-43, 53.

17 The Court must accept all of these allegations as true, and the reasonable  
 18 inferences that flow from them. *See Ass’n for L.A. Deputy Sheriffs*, 648 F.3d at  
 19 991. Under *Iqbal* and *Twombly*, plaintiffs have sufficiently alleged that Universal  
 20 authorized the creation of an infringing work in violation of 17 U.S.C. § 106(2).

21 Universal misapplies the relevant law in arguing that the Screenplay is not  
 22 actionable because it is merely an intermediary work. Mot. at 6-7. So-called  
 23 intermediary works are relevant and actionable when a plaintiff alleges the  
 24 intermediary work infringes its copyrights: “[P]reliminary works created in  
 25 production of [a] motion picture can constitute infringing copies within the  
 26 meaning of the 1976 Copyright Act.” *Walt Disney Prods.*, 628 F. Supp. at 874; *see*  
 27 *also Gilbert v. New Line Prods.*, 2010 WL 891333, at \*1, 3 (C.D. Cal. Feb. 17,  
 28 2010) (permitting plaintiff to pursue claim that defendants’ intermediary

screenplays infringed plaintiffs' screenplays); *Sega Enters. Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1519 (9th Cir. 1992) ("intermediate copying ... may infringe the exclusive rights granted to the copyright owner in section 106 ... regardless of whether the end product of the copying also infringes those rights"). Universal's cases do not hold otherwise. Rather, they stand for a different proposition: that courts will generally not consider intermediary works as evidence that a *later* version of the work is infringing. *E.g. Walker v. Time Life Films, Inc.*, 615 F. Supp. 430, 433, 436-37 (S.D.N.Y. 1985) (plaintiff alleged only that final film infringed his written work).<sup>7</sup> The Ninth Circuit has rejected the same argument Universal makes here. *Sega*, 977 F.2d at 1518 (defendant "points to a number of cases that it argues establish the lawfulness of intermediate copying ... [i]n each case ... [the] lawsuit alleged infringement *only as to the final work of the defendants*"). In this lawsuit, plaintiffs alleged that the original Screenplay *and* the revised Screenplay infringe the Bond works. Compl. ¶¶ 1-5, 38, 40-50, 56-71, 75. Those allegations are sufficient to allow plaintiffs to rely on the original and revised Screenplays to show infringement. *See Walt Disney Prods.*, 628 F. Supp. at 874.<sup>8</sup>

**B. Universal's "Defenses" To Plaintiffs' Direct Infringement Claims Are Without Merit.**

*The Controversy Is "Ripe."* Universal seeks to excuse its conduct by claiming that this lawsuit is premature. Here again, Universal is wrong on the law. For a dispute to be ripe, Article III requires only that: (1) the record be fit for review and (2) hardship would befall the parties in the absence of the Court's

<sup>7</sup> *See also Quirk v. Sony Pictures Entm't Inc.*, 2013 WL 1345075, at \*3, \*6 (N.D. Cal. Apr. 2, 2013) (same); *Hudson v. Universal Pictures Corp.*, 2004 WL 1205762, at \*1, \*3-4 (E.D.N.Y. Apr. 29, 2004) (same; court nevertheless considered intermediate drafts); *Chase-Riboud v. Dreamworks Inc.*, 987 F. Supp. 1222, 1224, 1231 (C.D. Cal. 1997) (same).

<sup>8</sup> *See also Walker v. Univ. Books*, 602 F.2d 859, 864 (9th Cir. 1979) ("the fact that an allegedly infringing copy of a protected work may itself be only an inchoate representation of some final product to be marketed commercially does not in itself negate the possibility of infringement").

1 consideration. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967), *abrogated*  
 2 *on other grounds*. Those elements are met here. First, the record is fit for review  
 3 because the Court has before it the Bond works and the infringing Screenplay  
 4 Universal bought (which Universal has already reproduced, distributed, and  
 5 authorized revisions to). In view of plaintiffs’ allegations and Universal’s judicially  
 6 noticeable admissions discussed above, the Court may reasonably infer that a  
 7 revised draft now exists on Berg’s computer and/or in Universal’s possession and  
 8 can be obtained through discovery. Second, hardship would befall *both* parties in  
 9 the absence of court action because the value of plaintiffs’ intellectual property will  
 10 continue to be harmed by Universal’s unlawful use, plaintiffs will continue to be  
 11 unable to control their intellectual property, and Universal will continue to incur  
 12 expenses developing a project to which it has no underlying rights.

13 An issue is generally unripe for review when it is merely “theoretical” or  
 14 “abstract.” *Cal. State Water Res. Control Bd. v. F.E.R.C.*, 966 F.2d 1541, 1562 (9th  
 15 Cir. 1992). Given that Universal has already engaged in infringing conduct with  
 16 the version of the Screenplay it purchased and with the revised version it  
 17 subsequently had prepared, Compl. ¶¶ 7, 9, 40-55, 69, this dispute cannot be said to  
 18 concern only theoretical, future conduct that may never occur. Universal’s cited  
 19 cases are thus inapposite. *See Clinton v. Acequia, Inc.*, 94 F.3d 568, 572 (9th Cir.  
 20 1996) (breach-of-contract claim not ripe because defendant’s performance was not  
 21 yet due and, thus, breach might never occur); *Portland Police Ass’n v. Portland*,  
 22 658 F.2d 1272, 1274-75 (9th Cir. 1981) (claim not ripe where five contingencies  
 23 needed to take place before alleged wrongful conduct could occur).<sup>9</sup>

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24  
 25 <sup>9</sup> Universal cites two other cases for the proposition that “[i]n analogous cases  
 26 seeking declaratory relief, courts have dismissed *copyright* claims as premature  
 27 unless a party seeking relief can establish that the potentially infringing work  
 28 ‘presented to the court is the same product which will be produced if a declaration  
 of noninfringement is obtained.’” Mot. at 10. In addition to being a misstatement  
 of the law, as addressed above, plaintiffs misstate the holdings of these cases—both  
 address *patent* claims, not *copyright* claims. *See Sierra Applied Scis., Inc. v.*

1 Finally, Universal misstates the law when it argues that an infringement suit  
 2 is ripe only when the “final” infringing work has been completed. *See* Mot. at 9-10.  
 3 That argument is an extension of Universal’s incorrect assertion that “intermediary  
 4 works” cannot be actionable. *See id.* at 6-7. As noted above, that is contrary to the  
 5 case law. *See Walt Disney Prods.*, 628 F. Supp. at 874. A copyright dispute is ripe  
 6 where, as here, defendant engages in infringing activity.

7 ***Universal’s Self-Serving Promise That The Next Version Of The***  
 8 ***Screenplay Will Not Infringe Is Irrelevant.*** Universal’s assertion that it does not  
 9 intend to infringe plaintiffs’ copyrights in the future is improper and irrelevant.  
 10 Infringement is a strict liability action. *See Pye*, 574 F.2d at 481 (“even where the  
 11 defendant believes in good faith that he is not infringing a copyright, he may be  
 12 found liable”). A defendant cannot excuse itself from a lawsuit by merely  
 13 representing that it will cease violating the plaintiff’s rights.

14 Moreover, Universal’s assertions about its intentions, and about the extent to  
 15 which the existing revised version of the Screenplay (which neither plaintiffs nor  
 16 the Court has seen) infringes plaintiffs’ copyrights, are contrary to the allegations of  
 17 the complaint, Compl. ¶¶ 3-5, 10-11, 45-50, and are not supported by judicially  
 18 noticeable documents or facts. Thus, the Court cannot accept Universal’s assertions  
 19 on a motion to dismiss. Instead, for purposes of this motion, the Court must accept  
 20 plaintiffs’ allegations that the revised Screenplay infringes plaintiffs’ copyrights.  
 21 *See Ass’n for L.A. Deputy Sheriffs*, 648 F.3d at 991. Plaintiffs may reasonably  
 22 infer, based on industry custom and practice and their years of experience in the  
 23 motion picture industry, that discovery will bear this out. Without the copied  
 24 *James Bond* material, including the characters, plot, dialogue, settings, mood, etc.,  
 25 the Screenplay would be eviscerated. The complaint alleges that Universal was  
 26 attracted to the material—and paid handsomely for it—because of its “Bond-like”

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27 *Advanced Energy Indus., Inc.*, 363 F.3d 1361, 1379-80 (Fed. Cir. 2004); *Int’l*  
 28 *Harvester Co. v. Deere & Co.*, 623 F.2d 1207, 1216-17 (7th Cir. 1980).



elements. Compl. ¶¶ 2-5, 40, 42, 53, 56-64. Universal may dispute these facts, but it cannot do so at the pleading stage.<sup>10</sup>

**V. PLAINTIFFS HAVE ALLEGED FACTS SUFFICIENT TO STATE CLAIMS FOR INDIRECT INFRINGEMENT.**

Plaintiffs' complaint alleges sufficient facts to state claims for contributory infringement, vicarious infringement, and inducement of infringement. Universal attacks plaintiffs' indirect infringement claims on the grounds that they are pled on "information and belief" and that they are unfounded because Universal has claimed that a revised Screenplay does not yet exist and that it does not intend to infringe moving forward. For the reasons noted above, those arguments lack merit and plaintiffs are entitled to all reasonable inferences in their favor. *See, e.g., Keegan*, 838 F. Supp. 2d at 961 n.85 (allegations based on "information and belief" are proper where information is in sole possession of defendant); *Dillon*, 2013 WL 3581938, at \*5 (denying defendants' motion to dismiss copyright infringement claim based, in part, on "drawing all reasonable inferences in favor of Plaintiff").

**A. The Complaint Pleads A Claim For Contributory Infringement.**

To state a claim for contributory infringement, a plaintiff must allege that the defendant: (1) knew of direct infringing activity, and (2) "induce[d], cause[d] or materially contribute[d] to the infringing conduct of another." *A&M Records*, 239 F.3d at 1019.

The complaint alleges each of those elements. It alleges that the Screenplay is an unauthorized derivative work based on the Bond works and that Universal

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<sup>10</sup> The Court should permit the case to proceed so plaintiffs can obtain the revised versions of the Screenplay and bring them before the Court in due course. *See Kimbell v. Rock*, 2009 WL 3248208, at \*4 (C.D. Cal. Oct. 8, 2009) (granting discovery to enable plaintiff to obtain allegedly infringing film to pursue relief); *Walt Disney Prods.*, 628 F. Supp. at 878 (denying defendants' motion for summary judgment where "any inadequacy in [plaintiff's] evidentiary showing [of substantial similarity] [wa]s largely the consequence of [defendant's] unwillingness to produce [allegedly infringing content] in discovery").

1 knew it, Compl. ¶¶ 2-5, 38, 40-41, 56-64, 75; that Universal nevertheless purchased  
 2 the infringing Screenplay and hired Berg to revise it, *id.* ¶¶ 40, 42-43, 45-48, 53;  
 3 Dkt. Nos. 15 at 2:7-10, 2:27-3:1, 15-1 ¶¶ 3, 7; and that Universal induced, caused,  
 4 or materially contributed to Berg’s unauthorized preparation, duplication, and  
 5 distribution of the revised Screenplay by, *inter alia*, paying Berg for the Screenplay  
 6 and hiring and directing him to revise it into its current, infringing form, *id.* ¶¶ 42-  
 7 43, 45-48, 50, 76; *see* Dkt. Nos. 15 at 2:7-10, 15-1 ¶¶ 3, 7. Where, as here, a party  
 8 engages someone to create an infringing work, the hiring party has engaged in  
 9 contributory infringement. *See Smith v. Mikki More, LLC*, 2014 WL 1875929, \*3-4  
 10 (S.D.N.Y. May 9, 2014) (denying motion to dismiss claim for contributory  
 11 copyright infringement when plaintiff alleged defendant hired an artist to “re-create  
 12 [plaintiffs’] works”); *LaTele Telv’n C.A. v. Telemundo Commc’ns Grp., LLC*, 2013  
 13 WL 1296314, at \*10-11 (S.D. Fl. Mar. 27, 2013) (denying motion to dismiss  
 14 contributory infringement claim when plaintiff alleged defendants “had knowledge  
 15 of [other defendants’] infringement” by employing the infringing telenovela’s  
 16 screenwriter and “intentionally induced or materially contributed to the  
 17 infringement by controlling the ... creation and development of [the telenovela] and  
 18 by approving its production and broadcast”).

19 Universal’s reliance on *Med-Systems* and *Luvdarts* to attack the adequacy of  
 20 plaintiffs’ contributory infringement claims is misplaced. In *Med-Systems*,  
 21 plaintiff’s claim failed because he did not allege defendant contributed to the  
 22 infringing conduct. *Med-Systems, Inc. v. Masterson Mktg., Inc.*, 2011 WL  
 23 5873399, at \*7 (S.D. Cal. Nov. 23, 2011). Similarly, in *Luvdarts*, plaintiffs failed  
 24 to allege facts showing defendants had knowledge of the allegedly infringing  
 25 activity. *Luvdarts, LLC v. AT&T Mobility, LLC*, 710 F.3d 1068, 1072-73 (9th Cir.  
 26 2013). As described above, plaintiffs’ complaint contains neither of these defects  
 27 and, to the contrary, alleges facts sufficient to support every element of a claim for  
 28 contributory infringement.



**B. The Complaint Pleads A Claim For Vicarious Infringement.**

To state a claim for vicarious infringement, a plaintiff must allege that the defendant: (1) received a direct financial benefit from the infringement, and (2) had the right and ability to supervise or control that infringement. *See A&M Records*, 239 F.3d at 1023. The complaint alleges facts sufficient to satisfy both elements.

First, the complaint alleges that Universal has enjoyed direct financial benefits from Berg's infringement. A "direct financial benefit" exists when "there is a causal relationship between the infringing activity and *any* financial benefit a defendant reaps, regardless of how substantial the benefit." *Marvel Enters., Inc. v. NCSoft Corp.*, 2005 WL 878090, at \*4 (C.D. Cal. Mar. 9, 2005). In this case, Universal reaped a financial benefit by: (1) receiving publicity of its acquisition of the Screenplay; (2) capitalizing on the publicity to hire a lead actor, a director, and a team of experienced producers; and (3) enhancing the value of its brand and, by extension, its future earning potential. *Id.* ¶¶ 53, 83. Universal will reap a further direct financial benefit if it produces and distributes the *Section 6* motion picture. *Id.* This is enough to allege a direct financial benefit. *See A&M Records*, 239 F.3d at 1023 (finding direct financial benefit when infringing material acted as a "draw" for customers, even when the customers did not pay directly for the infringing content or the service through which it was available and the defendant benefitted only by potentially augmented "future revenue" from "increases in user-base"); *Live Face on Web, LLC v. Howard Stern Prods.*, 2009 WL 723481, at \*3-4 (E.D. Pa. Mar. 17, 2009) (holding complaint satisfied the direct financial benefit requirement because, in part, it alleged that unauthorized content on defendants' website "reinforc[ed] and advanc[ed] the brand and image of the Howard Stern Show and HSP's products and services"); 3 M. NIMMER & D. NIMMER, NIMMER ON COPYRIGHT § 12.04[A][2] (Matthew Bender, Rev. Ed.) (case law indicates "a possible, indirect benefit" satisfies the direct financial benefit requirement).

1           The complaint also alleges that Universal has the right and ability to  
 2 supervise or control the infringement because, as Universal has since admitted,  
 3 Universal engaged Berg to revise the Screenplay at its direction. Compl. ¶¶ 42-43,  
 4 45, 50, 54; Dkt. Nos. 15 at 2:27-3:1, 15-1 ¶¶ 3, 7. Relatedly, plaintiffs allege that,  
 5 through its contract with Berg, Universal has the right and ability to supervise or  
 6 control the content of the Screenplay and the resulting infringement. Compl. ¶¶ 45-  
 7 46, 84. This relationship between Universal and Berg is enough to satisfy the  
 8 second element of a vicarious infringement claim. *See A&M Records*, 239 F.3d at  
 9 1022 (“[v]icarious copyright liability is an ‘outgrowth’ of respondeat superior”);  
 10 *Mikki More*, 2014 WL 1875929, at \*3-4 (denying motion to dismiss claim for  
 11 vicarious copyright infringement when plaintiff alleged defendant hired an artist to  
 12 “re-create [plaintiffs’] works”); *Cass Cnty. Music Co. v. C.H.L.R., Inc.*, 88 F.3d  
 13 635, 638 (8th Cir. 1996) (employer “had the right and ability to supervise”  
 14 employees who infringed copyrights without employer’s knowledge); *Brayton*  
 15 *Purcell LLP v. Recordon & Recordon*, 2007 WL 420122, at \*8-9 (N.D. Cal. Feb. 6,  
 16 2007) (the “arbitrator could reasonably have inferred that [defendant] had the right  
 17 and ability to supervise [the direct infringer in a vicarious copyright infringement  
 18 action] given that [defendant] was [the direct infringer’s employer’s] president ...  
 19 that [defendant] hired [the direct infringer], and that [defendant] fired [the direct  
 20 infringer]”); *see also LaTele*, 2013 WL 1296314, at \*10-11 (denying motion to  
 21 dismiss vicarious infringement claim when plaintiff alleged one defendant “had the  
 22 right or ability to supervise ... because it ha[d] the final authority to green-light [the  
 23 infringing telenovela] and approved the decision to create, develop and produce [it],  
 24 ... [and] could have stopped or limited the infringement but failed to do so”).

25           In addition, and contrary to Universal’s assertion, Mot. at 15-16, the  
 26 complaint does allege that Universal “declined to exercise” its right to stop Berg’s  
 27 infringement: The complaint alleges Universal “exercis[ed]” its “legal right and  
 28

1 ability to supervise and direct” Berg’s revision of the Screenplay to create a new  
 2 unauthorized derivative work of the Bond works, Compl. ¶¶ 45-46.

### 3 **C. The Complaint Pleads A Claim For Inducement Of Infringement.**

4 To state a claim for inducement of infringement, a plaintiff must allege the  
 5 defendant “actively and knowingly aid[ed] and abet[ted] another’s direct  
 6 infringement.” *Bangkok Broad. & T.V. Co. v. IPTV Corp.*, 742 F. Supp. 2d 1101,  
 7 1118 (C.D. Cal. 2010). Universal misstates the law in arguing that inducement  
 8 requires plaintiff to allege “distribution of a device or product.” *See* Mot. at 17.  
 9 “Inducement liability is not limited, either logically or as articulated in [*MGM*  
 10 *Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005)], to those who distribute a  
 11 ‘device.’” *Columbia Pictures Indus. v. Fung*, 710 F.3d 1020, 1033 (9th Cir. 2013).

12 Plaintiffs have adequately alleged that Universal induced Berg to infringe the  
 13 Bond works. The complaint alleges that Universal paid Berg for the infringing  
 14 Screenplay and hired him to write a revised version that also infringes plaintiffs’  
 15 copyrights. Compl. ¶¶ 42-43, 45-48, 50, 53, 91-92. This is all plaintiffs need to  
 16 allege to state a claim for inducement. *See Columbia Pictures*, 710 F.3d at 1033 (in  
 17 inducement claims, “copyright liability depends on one’s purposeful involvement in  
 18 the process of reproducing copyrighted material”).

### 19 **VI. NO CLAIMS SHOULD BE DISMISSED WITH PREJUDICE.**

20 To state a claim, plaintiffs must only “nudge[] their claim[] across the line  
 21 from conceivable to plausible.” *Twombly*, 550 U.S. at 570. Plaintiffs have  
 22 surpassed that bar by alleging facts sufficient to show that Universal has directly  
 23 and indirectly infringed plaintiffs’ copyrights in the Bond works.

24 Even if the Court were inclined to dismiss the complaint, in full or in part, it  
 25 should do so without prejudice to plaintiffs’ right to amend. *See* FED. R. CIV. P.  
 26 15(a)(2) (“court should freely give leave [to amend] when justice so requires”);  
 27 *Jewel v. Nat’l Sec. Agency*, 673 F.3d 902, 907 n.3 (9th Cir. 2011) (“[d]ismissal  
 28 without leave to amend is improper unless it is clear ... that the complaint could not

1 be saved by any amendment”); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)  
 2 (“in a line of cases stretching back nearly 50 years, we have held that ... a district  
 3 court should grant leave to amend ... unless it determines that the pleading could  
 4 not possibly be cured by the allegation of other facts”). Here, plaintiffs should, at a  
 5 minimum, be permitted to amend their complaint when Universal produces the  
 6 revised Screenplay. *See Florer v. Collins*, 2012 WL 367283, at \*3 (W.D. Wash.  
 7 Jan. 9, 2012) (“[a] case dismissed for lack of ripeness is generally dismissed  
 8 without prejudice”).

## 9 VII. CONCLUSION

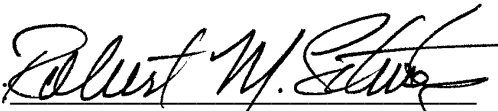
10 As alleged in the complaint, Universal has independently infringed plaintiffs’  
 11 exclusive rights under the Copyright Act. It must be held to account for its prior  
 12 and continuing conduct. The notion that its presence in this lawsuit is “premature”  
 13 is contrary to the allegations of the complaint, which are sufficient under the law to  
 14 state ripe claims against Universal for direct and secondary copyright infringement.  
 15 For the reasons set forth above, the Court should deny Universal’s motion.

16  
 17 Dated: June 25, 2014

Respectfully submitted,

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